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**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

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| THE PEOPLE,<br><br>Plaintiff and Respondent,<br><br>v.<br><br>RUFUS ATCHLEY,<br><br>Defendant and Appellant. | B231086<br><br>(Los Angeles County<br>Super. Ct. No. NA081616) |

APPEAL from a judgment of the Superior Court of Los Angeles County, Joan Comparet-Cassani, Judge. Affirmed.

Daniel G. Koryn, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Paul M. Roadarmel, Jr., and Jaime L. Fuster, Deputy Attorneys General, for Plaintiff and Respondent.

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## INTRODUCTION

Following a jury trial, defendant Rufus Atchley was found guilty of first degree murder (Pen.Code, § 187, subd. (a)), with the personal discharge of a firearm (*id.*, § 12022.53, subd. (d)). He was sentenced to 50 years to life in state prison. On appeal, defendant claims several instructional errors and erroneous failure to excuse a juror. We find no grounds for reversal and affirm the judgment.

## FACTS

### *Prosecution*

Jessica Romero (Romero) was defendant's girlfriend on-and-off for two years. Even when defendant was not high on drugs, he was physically abusive toward Romero and once pointed a gun at her and shot a couch.

Robert Banes (Banes) was a friend of defendant and Romero and would use drugs with them. The friendship deteriorated in November 2008, when Romero stayed at Banes's home for one night after defendant was arrested. When defendant picked up Romero and took her home, they argued and he assaulted her, because he felt that something had gone on between her and Banes the previous evening. Defendant kicked Romero out of their home, and she stayed with Banes for a few weeks.

In March 2009, defendant saw Romero. They used drugs, had sex, and Romero moved back in with defendant. Defendant was still jealous because Romero had sex with Banes. About two weeks prior to March 30, 2009, defendant was angry with Banes for blowing kisses at defendant's daughter. Defendant felt Banes had disrespected him and told Romero, "I'm going to kill [him]. He wants to disrespect me. He wants to mock me in my face. First, he took my lady and, now, he wants to disrespect me and mock me and blow kisses at my daughter. I'm going to blow [him away]."

On March 30, 2009, before 10:30 a.m., Holly Lam (Lam) was driving in San Pedro. The car in front of Lam stopped in the middle of the lane. Defendant got out of

the passenger side of the car and quickly walked over to the other side of the street. Defendant approached a man standing on the sidewalk and had a conversation with him. Lam passed the car in front of her. She looked in her rearview mirror and noticed defendant pointing a black handgun at the other man. Defendant was about two feet away from the other man. She heard a gunshot and saw the other man fall to the ground. Lam did not see anything in the victim's hands. Lam later selected defendant's photograph from a lineup but was not 100 percent positive because the shooter "was a little bit older" than the person in the photograph. At trial, she was certain defendant was the shooter.

Los Angeles Police Department (LAPD) Detective Daniel Burzumato responded to the crime scene. He saw Banes's car parked on the south curb with the door open. There were two nine-millimeter shell casings and a "fully jacketed brass spent bullet" near the car. Later in the day, Detective Burzumato participated in the execution of a search warrant at defendant's residence. A nylon shoulder holster with ammunition carriers was recovered from defendant's garage. Two live nine-millimeter rounds were recovered, but the police did not recover a firearm.

When the police entered the home, Richard Anderson (Anderson), defendant's friend, and Romero were in the home. Defendant was hiding down the street. Anderson told Romero that defendant had shot Banes. At the time he was arrested, defendant was wearing clothes similar to those described by Lam as those the shooter was wearing.

Special Agent Jeffrey Cottett of the Drug Enforcement Administration was investigating a drug network in San Pedro and had obtained wiretap orders for telephones belonging to Arnulfo Arochi (Arnulfo) and Lawrence Galaz (Galaz). On March 30, Agent Cottett became aware of intercepted calls in which Banes's murder was discussed. He provided LAPD with recordings of 10 telephone conversations that took place between 10:29 and 11:33 a.m. on March 30, 2009. At 10:29 a.m., Arnulfo told Galaz that

defendant had killed Banes right in front of Alvaro Arochi's (Alvaro) home.[1] At 10:30 a.m., defendant told Galaz that he got "that punk." Defendant added that he shot him twice in the stomach and wanted to kill him. At 10:44 a.m., Alvaro told Arnulfo that defendant had argued with Banes, went home to get his firearm, and then came back and shot Banes in front of Alvaro's house. Arnulfo mentioned to Alvaro that defendant had admitted shooting Banes twice.

On March 30, 2009, LAPD Detective David Cortez interviewed Alvaro, who expressed fear about testifying. He said that he had been trying for weeks to talk defendant out of doing something. He stated that defendant had come over around 10:00 a.m. and was very angry at Banes. Defendant returned in a different car when Banes was just getting out of his car, shots were fired and defendant was the shooter.

A few months after the murder, defendant called Romero from jail. Defendant asked her if she was happy he was in jail for killing Banes. He told her he "should have cut [Banes's penis] off and put it on a mantel for" her. He also said he killed Banes for her and it was her fault that he was dead.

On June 11, 2009, Detective Cortez interviewed Anderson. The interview was tape recorded and played at trial. Anderson was a good friend of defendant and was reluctant to give a statement. He was given immunity for his testimony. Anderson said he had smoked crack cocaine for three days prior to the shooting and had slept very little during this time. He gave an account of the events on March 30, 2009. He stated defendant told him he needed a ride and Anderson thought they were going to buy drugs. While driving, they saw Alvaro and Banes getting out of a car. Anderson stopped his car on the street and defendant got out of the car and shot Banes, who fell on his side. Defendant started walking back to Anderson's car but stopped and shot Banes again. Anderson did not know defendant was going to shoot Banes. Defendant mentioned

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[1] At trial, Alvaro claimed he did not remember anything about March 30 because he was drinking and smoking weed. Galaz was also evasive at trial.

Banes's disrespect toward his daughter as the reason for the shooting. Anderson never mentioned seeing anything in Banes's hands.

Solomon Riley, a deputy medical examiner with the Los Angeles County Department of Coroner, conducted the autopsy on Banes and determined that he died as a result of two fatal gunshot wounds to his abdomen. Banes was six feet one inch tall, and weighed 260 pounds. There was cocaine in Banes's blood and no gunshot residue on his hands.

***Defense***

Defendant testified and indicated that he had known Romero for approximately 10 years, and they were involved in a romantic relationship from 2004 until March 30, 2009. In November 2008, his relationship with Banes ended after Romero spent the night with Banes. In February 2009, Banes threatened to "smash" defendant if he found out defendant had been the person who burglarized his home. Banes also started intimidating or "mad dogging" defendant when they encountered each other at Alvaro's home.

About two weeks prior to March 30, 2009, defendant's daughter drove him to visit Galaz. As defendant's daughter waited in the driveway, Banes called her and blew kisses at her. When defendant's daughter told him what Banes had done, he was upset and told her to stop the car, but she refused and drove away.

Defendant was doing crack cocaine the entire weekend leading up to March 30, 2009. Around 10:00 a.m., defendant went to Alvaro's home to buy drugs. He saw Alvaro and Banes in front of Alvaro's home. Ever since the incident when Banes blew kisses at his daughter, defendant had been upset. He confronted Banes about it. Defendant, who had "shower shoes" on, was ready to fight Banes but told him, "Let me go put on my shoes. I'll [be] right back and I'll accommodate you." Defendant was not concerned that Banes was much larger in size.[2] When he was leaving, Banes taunted

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[2] Defendant testified that he was five feet four inches tall, and weighed 170 pounds.

him, threatening to sexually assault defendant's daughter and then defendant himself. That sent defendant into a rage. He then drove home. He already was carrying his pistol because he had a large amount of cash on him.

When defendant arrived at his home, he put on his tennis shoes and asked Anderson for a ride. He planned to fight Banes and wanted Anderson to watch his back, although he never told Anderson that. Anderson assumed they were going to buy drugs.[3] As they pulled up at Alvaro's home, defendant asked him where Banes was, and Alvaro pointed across the street. As defendant walked "real fast" toward Banes's car, Banes started to get out of the car. Banes told him that nobody messes with a "polar bear" and reached toward his car. Defendant saw a shotgun on the floor of the car. As defendant ran towards Banes, he reached for his nine-millimeter pistol to defend himself. Banes "turned real quick and lunged at" defendant, without the shotgun. Banes grabbed defendant's arm and pulled the gun away from him. The gun went off. Defendant was in shock because he did not intend to shoot Banes. As he was running back to his car, the gun accidentally discharged a second time, hitting Banes. Defendant then left with Anderson and returned to his home.

When he observed police cars approaching his home, defendant fled, throwing his pistol in a neighbor's trash can. At trial, defendant admitted the authenticity of the intercepted phone calls and agreed that he never mentioned the shooting was accidental or in self-defense.

***Rebuttal***

Detective Burzumato searched Banes's car and did not find any firearms or weapons inside it.

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[3] Defendant later testified he was not sure whether he told Anderson that he was going to fight Banes.

## DISCUSSION

***Failure to Instruct on Sudden Quarrel or Heat of Passion Voluntary Manslaughter***

The trial court has a duty to "instruct on lesser offenses necessarily included in the charged offense if there is substantial evidence the defendant is guilty only of the lesser. [Citation.] On the other hand, if there is no proof, other than an unexplainable rejection of the prosecution's evidence, that the offense was less than that charged, such instructions shall not be given. [Citation.]" (*People v. Kraft* (2000) 23 Cal.4th 978, 1063-1064.)

Voluntary manslaughter is the "unlawful killing of a human being without malice" "upon a sudden quarrel or heat of passion." (Pen. Code, § 192, subd. (a).) An unlawful killing also may be voluntary manslaughter where malice has been negated by an honest but unreasonable belief the defendant's life was in imminent danger from the victim. (*People v. Blakeley* (2000) 23 Cal.4th 82, 88; *People v. Lasko* (2000) 23 Cal.4th 101, 108.)

A killing "upon a sudden quarrel or heat of passion" (Pen. Code, § 192, subd. (a)) occurs "'if the killer's reason was actually obscured as the result of a strong passion aroused by a "provocation" sufficient to cause an "'ordinary [person] of average disposition . . . to act rashly or without due deliberation and reflection, and from this passion rather than from judgment.'"'" (*People v. Lasko*, *supra*, 23 Cal.4th at p. 108.) The offense has both a subjective and an objective component. (*People v. Steele* (2002) 27 Cal.4th 1230, 1252.)

Defendant argues that there was substantial evidence of sufficient provocation to justify an instruction on voluntary manslaughter resulting from a sudden quarrel or heat of passion. The record does not support defendant's contention that this instruction was warranted. The prosecution presented evidence that defendant and Banes had been friends until a falling out in November 2008, after defendant's girlfriend, Romero, spent the night with Banes. Several weeks before the murder, defendant told Romero that Banes had blown kisses at defendant's daughter, and he was going to kill Banes.

Anderson saw defendant pull out a gun, approach Banes and shoot him without Banes attacking him. Defendant said that Banes's disrespect toward his daughter was the reason for the shooting.

None of this provocation, occurring some time before the murder, was sufficient to cause an ordinary person to act rashly without due deliberation. (*People v. Kanawyer* (2003) 113 Cal.App.4th 1233, 1245.) The evidence in fact showed that defendant decided to kill Banes several weeks before actually doing so, demonstrating that defendant did not act in the heat of passion.

Neither did the evidence presented by the defense support an instruction on heat of passion voluntary manslaughter. Defendant presented evidence that when he confronted Banes, Alvaro told defendant and Banes to fight inside his yard. Defendant was ready to fight and was not concerned about Banes's larger size. Defendant went home to get his shoes. When defendant returned, he got out of the car and rushed toward Banes. Banes said that nobody messes with a "polar bear" and reached toward his car. Defendant saw a shotgun in Banes's car and reached for his pistol. As Banes lunged at defendant, without a weapon, the gun went off accidently; Banes was shot a second time, accidentally, as defendant was leaving.

Under defendant's version of the events, the shooting was accidental; defendant was not acting out of the heat of passion. Defendant intended to fight Banes, but rather than immediately launching an assault, he went home to get his shoes, demonstrating that he was thinking about his actions and not acting rashly.

Defendant rushed Banes as Banes was getting out of his car. Even if defendant killed Banes during an alleged struggle for the gun, defendant initiated the struggle and may not assert provocation by the victim. (See, e.g., *People v. Johnston* (2003) 113 Cal.App.4th 1299, 1312-1314 [the defendant instigated a fight and then stabbed the unarmed victim, who was getting the better of the defendant in the fight].)

Banes's taunts when defendant returned were not sufficient to require an instruction on voluntary manslaughter. Such statements "plainly were insufficient to cause an average person to become so inflamed as to lose reason and judgment." (*People*

*v. Manriquez* (2005) 37 Cal.4th 547, 586; *People v. Najera* (2006) 138 Cal.App.4th 212, 226.)

For all the foregoing reasons, the trial court did not have a sua sponte duty to instruct the jury on heat of passion or sudden quarrel.

***Failure to Instruct on Voluntary Manslaughter Based on Imperfect Self-Defense***

Defendant asserts that despite substantial evidence supporting it, the trial judge erroneously failed to instruct the jury sua sponte on the lesser included offense of voluntary manslaughter based on imperfect self-defense. We disagree.

The trial court has the duty to instruct the jury sua sponte on voluntary manslaughter based on imperfect or unreasonable self-defense "'whenever the evidence is such that a jury could reasonably conclude that the defendant killed the victim in the unreasonable but good faith belief in having to act in self-defense.' [Citation.]" (*People v. Breverman* (1998) 19 Cal.4th 142, 159, italics omitted; accord, *People v. Lee* (1999) 20 Cal.4th 47, 59.) However, imperfect self-defense is unavailable where it is the defendant who is the initial aggressor. (*People v. Hill* (2005) 131 Cal.App.4th 1089, 1102, disapproved on another ground in *People v. French* (2008) 43 Cal.4th 36, 48, fn. 5; cf. *Lee*, *supra*, at p. 59.) Since it was defendant who initiated the fight with Banes, he could not rely on a claim of imperfect self-defense.

The case of *People v. Vasquez* (2006) 136 Cal.App.4th 1176, relied upon by defendant, is distinguishable on its facts. In *Vasquez*, although the defendant set in motion the circumstances that led to the killing, the victim used unlawful force first against the defendant. Under those circumstances, the court held, imperfect self-defense was available, and the trial court was required to instruct on voluntary manslaughter. (*Id.* at pp. 1179-1180.) In the instant case, the evidence is clear that Banes never picked up a weapon. It was defendant who was armed and first drew a weapon. *Vasquez* does not apply.

***Failure to Instruct on Perfect Self-Defense***

Defendant argues the trial court was required to instruct on perfect self-defense. We find no error.

Defendant argues that because Banes was bigger than he was, said nobody messes with him, threatened to sexually assault defendant's daughter and then defendant himself, and then lunged at him, self-defense was justified and the trial court should have instructed the jury on that defense. As previously discussed, however, defendant was the initial aggressor and therefore was not entitled to a self-defense instruction.

Moreover, defendant never testified that he shot Banes in response to a fear of imminent peril to his life. Rather, he testified that the shooting was an accident. Defendant's accidental shooting defense was simply inconsistent with his claim of self-defense. In *People v. Curtis* (1994) 30 Cal.App.4th 1337, 1358, the court stated "self-defense and accidental homicide are mutually exclusive, a defendant who claims to have killed by accident while defending him or herself is not thereby entitled to jury instructions on self-defense." Similarly, "when a defendant draws a weapon in self-defense, but fires accidentally, the shooting itself is not considered self-defense. Instead, it is an accident." (*People v. Villanueva* (2008) 169 Cal.App.4th 41, 53) In the instant case, self-defense is not a viable theory for the accidental shooting when defendant and Banes fought over the gun defendant had drawn. In addition, the second accidental shooting, when Banes had been incapacitated, certainly was not an act of either perfect or imperfect self-defense.

***Failure to Instruct on Antecedent Threats***

Defendant contends that the trial court had a sua sponte duty to instruct the jury that antecedent threats justified quicker and harsher measures in self-defense. Defendant did not request an instruction on antecedent threats and the trial court did not err in failing to give the instruction on its own. In support of the instruction, defendant asserts Banes was bigger, had threatened to beat him up and told defendant that nobody messes with a

"polar bear" before the shooting. We do not agree that the trial court had a duty to so instruct the jury.

As previously explained, the evidence presented at trial did not support a finding that defendant shot Banes because he actually feared an imminent peril to his life. The evidence was that defendant sought out and confronted Banes on March 30. At the time of the shooting, defendant obviously was not concerned about previous threats made by Banes or his "polar bear" comment.

The cases relied upon by defendant are inapposite. In *People v. Moore* (1954) 43 Cal.2d 517, 527-529, the trial court erred in not giving a requested instruction on antecedent threats which was supported by the evidence and would have supplemented self-defense instructions. However, the *Moore* court stated that an instruction, "even though a correct statement of an abstract proposition of law, is improper when it finds no support in the evidence," and may be "ground for reversal if it is calculated to mislead the jury [citation]." (*Id.* at p. 530.) In the instant case, there was not sufficient evidence to warrant self-defense instructions, and any instruction on antecedent threats were not warranted by the evidence.

In *People v. Pena* (1984) 151 Cal.App.3d 462, the court stated "[A]n instruction on the effect of antecedent threats known by a defendant is required where [the] evidence establishes both threats of death or great bodily harm made by the deceased against the defendant and the defendant's belief and reliance thereon as influencing or justifying his actions. [Citations.]" (*Id.* at p. 475.) In the instant case, the evidence does not support the instruction. At the time of the shooting, defendant sought out Banes, he testified that he wanted to have a fistfight with him, and he returned to fight him after obtaining his tennis shoes. Clearly, defendant was not an individual that was in fear as a result of previous threats allegedly having been made by Banes.

***Failure of Trial Court to Give Accomplice Instructions***

Defendant maintains that the trial court erred in failing to give instructions on accomplice testimony, contending that there was sufficient evidence to show that Anderson was an accomplice as a matter of law. We disagree.

Penal Code section 1111 defines an accomplice and provides that "[a] conviction can not be had upon the testimony of an accomplice unless it be corroborated by such other evidence as shall tend to connect the defendant with the commission of the offense; and the corroboration is not sufficient if it merely shows the commission of the offense or the circumstances thereof." Where an accomplice testifies, the trial court must instruct the jury sua sponte that the accomplice's testimony is to be viewed with distrust and that the defendant cannot be convicted on the basis of the accomplice's testimony unless that testimony is corroborated. (*People v. Zapien* (1993) 4 Cal.4th 929, 982.) No such instruction was requested or given in the instant case.

An accomplice is a person "who is liable to prosecution for the identical offense charged against the defendant on trial in the cause in which the testimony of the accomplice is given." (Pen. Code, § 1111.) One is "'liable to prosecution for the identical offense'" if he fits the definition of a principal provided in Penal Code section 31. (*People v. Horton* (1995) 11 Cal.4th 1068, 1113.) That is, if he directly commits an act constituting an offense, aids and abets commission of the offense or, although not present, advises and encourages its commission, he fits the definition of a principal. (Pen. Code, § 31.)

One may be held liable as an aider and abettor when, with knowledge of the perpetrator's criminal purpose, he gives the perpetrator aid or encouragement with the intent of facilitating the perpetrator's commission of the crime. (*People v. Champion* (1995) 9 Cal.4th 879, 928; *People v. Beeman* (1984) 35 Cal.3d 547, 560.)

There was no evidentiary support for the finding that Anderson was an accomplice or in any way liable for the murder of Banes. Anderson had no knowledge of defendant's criminal purpose. Anderson and defendant had been using drugs, and he thought they were going to purchase more drugs. Anderson did not see defendant's gun until after

defendant got out of the vehicle. Defendant, in his testimony, corroborated Anderson's account. There is no evidence in the record that Anderson ever knew of defendant's intent to attack Banes, much less intended to facilitate it.

While it is true that Anderson was given immunity for testifying, was reluctant to implicate defendant, and avoided talking to the police until June 2009, that is not sufficient evidence to warrant accomplice instructions. At most, the evidence showed that Anderson was an accessory after the fact and did not share defendant's intent to kill since the murder had already been committed.[4]

In any event, the failure to instruct was harmless. "'[T]he failure to instruct on accomplice testimony pursuant to [Penal Code] section 1111 is harmless where there is sufficient corroborating evidence in the record. [Citations.] The requisite corroboration may be established entirely by circumstantial evidence. [Citations.] Such evidence "may be slight and entitled to little consideration when standing alone. [Citations.]"' [Citation.] 'Corroborating evidence "must tend to implicate the defendant and therefore must relate to some act or fact which is an element of the crime but it is not necessary that the corroborative evidence be sufficient in itself to establish every element of the offense charged." [Citation.]' [Citation.]" (*People v. Zapien*, *supra*, 4 Cal.4th at p. 982.)

Anderson's testimony was corroborated by evidence independent from his testimony. Romero testified that defendant had mentioned his intention to kill Banes before the shooting. Lam witnessed the shooting and identified defendant as the shooter. Alvaro also witnessed the shooting. Defendant admitted to Romero he had killed Banes. Defendant fled the murder scene. Calls were intercepted from defendant, made immediately after the shooting, implicating himself in the shooting, including defendant saying to Galaz that he had shot Banes in the stomach twice and he wanted to kill him.

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**4** Penal Code section 32 provides as follows: "Every person who, after a felony has been committed, harbors, conceals or aids a principal in such felony, with the intent that said principal may avoid or escape from arrest, trial, conviction or punishment, having knowledge that said principal has committed such felony or has been charged with such felony or convicted thereof, is an accessory to such felony."

While the jury was not given accomplice instructions, they were instructed to evaluate the credibility of all witnesses and to consider their bias, interest, motive, attitude and immunity for their testimony. The jury was also given other instructions on how to evaluate prior inconsistent statements and discrepancies in testimony and how to weigh conflicting testimony, and the testimony of a single witness. Defendant was not prejudiced by any alleged instructional error.

***Failure of Trial Court to Excuse Juror Number 11***

Defendant contends that the trial court erred when it refused to excuse a juror who was a neighbor of the investigating officer and had attended a neighborhood watch meeting at the officer's home. We disagree.

Penal Code section 1089 provides that a trial court may discharge a juror and replace him or her with an alternate if the juror is found to be unable to perform his or her duty. On appeal, this court reviews the decision to discharge a juror and replace him or her with an alternate for abuse of discretion. (*People v. Marshall* (1996) 13 Cal.4th 799, 843.) If there is substantial evidence supporting the trial court's decision, it will be upheld. (*Ibid*.)

The prospective jurors were told, at the beginning of voir dire, the witnesses that would be testifying. The potential witnesses included an "Officer" Cortez. The first name of the officer was not mentioned. Juror number 11 mentioned that he had a neighbor who was a police officer with the LAPD. He stated they knew each other and said hello to each other, but that was "about it." Juror number 11 stated that knowing the officer would not affect his ability to be fair and impartial.

Detective Cortez was called as the second witness by the prosecution. Juror number 11 blurted out, "I know Detective Cortez. We are neighbors. I'm sorry." Thereafter, a conference was held outside the presence of the jury. During the conference, Juror number 11 responded to the court's questions as follows: He said that he knew his neighbor as "David" and was not sure of his last name. He stated he was at the detective's home once for a neighborhood watch meeting and they would see each

other across the street and say hi. The detective has lived across the street for about two years. He has only had one conversation with the detective and that was when he was organizing the neighborhood watch meeting. He stated that the relationship with his neighbor would not affect his ability to be fair and impartial. The fact that he is a neighbor would not affect his ability to reach a verdict or be a juror.

After the court questioned Juror number 11, both attorneys were given the opportunity to inquire of the juror. During counsel's questions, the following responses were elicited: He stated that sitting on the jury made him feel "somewhat uncomfortable, yes, to be honest with you because of the situation and perceptions that could come out of this." When asked by counsel if it would interfere with his ability to be fair and impartial, he responded: "No, no. If it is decided I need to stay here on the jury, I'll do my job as a juror. I'll not let this . . . ." Juror number 11 went on to say that the fact that the detective was his neighbor "would not let that influence me on how I would decide a verdict."

After counsel was allowed to inquire, the Court asked the following question and received the following response from Juror number 11:

"The Court: So that the basis for your decision as to whether or not he is a credible witness or whether or not you believe his testimony will be according to the instructions I read to you and not your passing acquaintance with him in the neighborhood; is that correct?

"Juror No. 11: Yes."

The court denied defense counsel's request to excuse the juror, stating the juror did nothing wrong. He did not know the detective's last name. He has no relationship with the detective other than being neighbors, and he would follow the court's instructions and judge the credibility according to that.

Having listened to Juror number 11 during voir dire and the extensive subsequent hearing outside the presence of other jurors, the court was in the best position to determine the credibility of the juror. (See *People v. Carasi* (2008) 44 Cal.4th 1263, 1290-1291 ["where assessment of the juror's state of mind depends upon the resolution

of any conflicting or ambiguous statements and upon a credibility determination, we defer to the findings of the trial court"].

The record is clear that Juror number 11's involvement with Detective Cortez was very limited. He only knew his first name and didn't even know his last name as evidenced by his failure to mention Detective Cortez when he was listed as a potential witness during the voir dire process.

The trial court acted within its discretion in finding no good cause to discharge Juror number 11. There was no evidence of misconduct or bias by the juror. Having found no error, we reject defendant's contention that the cumulative effect of the alleged errors prejudiced his right to a fair trial and due process.

## DISPOSITION

The judgment is affirmed.

JACKSON, J.

We concur:

PERLUSS, P. J.

WOODS, J.